

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID C. THACKER,  
Plaintiff,

v.

AT&T CORPORATION, et al.,  
Defendants.

No. 2:20-cv-00255-KJM-CKD PS

ORDER

(ECF Nos. 11, 13, 16)

This matter is before the court following an initial status hearing held on July 8, 2020. Plaintiff, representing himself pro se in this matter, and defendant AT&T,<sup>1</sup> represented by Debbie Kirkpatrick, were present at the hearing. The parties have filed a joint status report. (ECF No. 15.) Also pending before the court are plaintiff's motions to amend his complaint, and plaintiff's motion for a protective order. (ECF Nos. 11, 13, 16.) For the reasons set forth below, the court rules as follows.

Plaintiff's motion for a protective order (ECF No. 13) requests that the court order defendants to "retain and make available for subsequent" discovery a number of documents and responses. It also appears that plaintiff is requesting that the court order these documents produced. (See id.) However, there is no indication that plaintiff has served defendants with a

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<sup>1</sup> Defendant Diversified Consultants, Inc. recently filed for bankruptcy protections (ECF No. 10) and is not actively participating in this case.

1 copy of the requests for production, or that defendants have refused production. Due to plaintiff  
2 failing to follow Federal Rules of Civil Procedure 33, 34, and 37, the court DENIES plaintiff's  
3 motion entitled "motion for protective order." (ECF No. 13.) However, defendants are reminded  
4 that they have a duty to preserve evidence that they reasonably should know may be relevant to  
5 this litigation. See United States v. Kitsap Physicians Serv., 314 F.3d 995, 1001 (9th Cir.2002);  
6 see also In re Napster, Inc. Copyright Litig., 462 F.Supp.2d 1060, 1070 (N.D.Cal.2006) (noting  
7 that once a duty to preserve arises, a party must "suspend any existing policies related to deleting  
8 or destroying files and preserve all relevant documents relating to the litigation").

9 Plaintiff has also requested leave to file an amended complaint. (ECF No. 16.) At the  
10 hearing on this matter AT&T represented that it does not oppose plaintiff's motion. Courts are  
11 instructed to freely grant leave to file amended pleadings. Fed. R. Civ. P. 15(a). Accordingly,  
12 considering the early stage of litigation and the directive to freely grant leave, plaintiff's motion  
13 to amend his complaint (ECF No. 16) is GRANTED.

14 Finally, the parties have proposed the following deadlines, which the court adopts:

15 Fact Discovery cut-off: December 16, 2020

16 Designation of experts: December 16, 2020

17 Designation of rebuttal experts: December 30, 2020

18 Expert discovery cut-off: March 1, 2021

19 Deadline for filing dispositive motions: March 5, 2021

20 The final pretrial conference and jury trial will take place before the assigned district  
21 judge, the Hon. Kimberly J. Mueller. The undersigned declines to set final pretrial conference  
22 and trial dates at this juncture, however. Instead, the court orders the parties to submit a Notice of  
23 Trial Readiness on one of the following timelines:

24 A. After resolution of any pending dispositive motions, the parties are to submit the  
25 Notice not later than thirty (30) days after receiving the district court's ruling(s) on the last  
26 filed dispositive motion(s); or

27 B. If the parties do not intend to file dispositive motions, the parties are ordered to file  
28 the Notice not later than one hundred twenty (120) days after the close of discovery, and

the notice must include statements of intent to forgo the filing of dispositive motions. In the Notice of Trial Readiness, the parties are to set forth the appropriateness of special procedures, their estimated trial length, any request for a jury, their availability for trial, and if the parties are willing to attend a settlement conference. The Notice shall also estimate how many court days each party will require to present its case, including opening statements and closing arguments. The parties' estimate shall include time necessary for jury selection, time necessary to finalize jury instructions and instruct the jury. After review of the parties' Joint Notice of Trial Readiness, the court will issue an order that sets forth dates for a final pretrial conference and trial.

Accordingly, it is HEREBY ORDERED that:

1. Plaintiff's motion for a protective order (ECF No. 13) is DENIED.
2. Plaintiff's motion to amend his complaint (ECF No. 16) is GRANTED. Plaintiff's proposed First Amended Complaint (ECF No. 12) is the now-operative complaint in this matter. Plaintiff's initial motion to amend (ECF No. 11) is DENIED as moot.
3. The deadlines proposed by the parties are ADOPTED and SET, as set forth above.

Dated: July 9, 2020

  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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